

Claims 1-15 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Breen et al. in view of Hayhurst et al., and if necessary, in view of Garwood '271. To overcome the rejection, a Declaration in accordance with 37 C.F.R. § 1.131 is attached hereto. The Declaration includes facts establishing reduction to practice of the invention prior to the effective date of Breen. Therefore, the applicant respectfully submits that the § 1.131 Declaration overcomes the rejection. *See* MPEP § 715.02 ("Applicant may overcome a 35 U.S.C. 103 rejection based on a combination of references by showing completion of the invention by applicant prior to the effective date of any of the references...").

A fundamental advantage of the claimed invention is that it provides a modified atmosphere package that can be produced at significantly higher speeds than prior art packages. To achieve such higher speeds, the claimed invention includes two important features. *First*, the outer package of the modified atmosphere package is rendered substantially free of oxygen therein solely in response to the outer package being flushed with one or more gases, such as nitrogen and carbon dioxide. In other words, the claimed invention strictly employs the rapid process of flushing, as opposed to the slow evacuation techniques required by the prior art. *Second*, since the rapid flushing process generally does not remove as much oxygen from the package as the significantly slower evacuation techniques, an activated oxygen scavenger is positioned to substantially absorb any residual oxygen within the outer package. Activation of the oxygen scavenger accelerator with an activating agent (i.e., oxygen uptake accelerator) allows the residual oxygen to be rapidly absorbed after the package is sealed. The rapid absorption of residual oxygen inhibits the formation of metmyoglobin which, otherwise, could change the color of the raw meat to an unappealing brown color. Thus, the claimed invention

combines (1) rapid flushing to initially reduce oxygen levels with (2) an activated oxygen scavenger to rapidly absorb any residual oxygen, while the prior art generally employs significantly slower evacuation techniques without an activated oxygen scavenger.

Although Hayhurst discusses the removal of oxygen from a package by using a hydrogen generating agent in the presence of a suitable catalyst, Hayhurst repeatedly and explicitly teaches away from the use of evacuation (vacuumize) and flushing techniques. Col. 3, lines 7-13, 28-32 ("The elimination of the need to vacuumize or flush the container prior to sealing is a big advantage over the previously known oxygen removal packaging techniques...").

In view of the foregoing remarks, the applicant respectfully submits that the present application is in a condition for allowance, and action toward that end is earnestly solicited.

The Commissioner is hereby authorized to charge deposit account no. 01-2508 (Order No. PCOA673) for any fees inadvertently omitted, except for the issue fee.

Respectfully submitted,

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